

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

In the Matter of:

Solomon Colors, Inc.  
1251 W. Durst Drive  
Rialto, CA 92376

Attn: Mark Freis

**COMPLAINT NO. R8-2009-0064  
for  
ADMINISTRATIVE CIVIL LIABILITY**

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Solomon Colors, Inc. (hereinafter Solomon Colors) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board) may impose administrative civil liability under California Water Code (hereinafter "CWC") §13385(c).
2. A hearing concerning this Complaint may be held before the Regional Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC §13323, Solomon Colors waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Board's regular meeting on January 29, 2010, at the Loma Linda City Council Chambers, located at 25541 Barton Road, Loma Linda, California. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

**THIS COMPLAINT IS BASED ON THE FOLLOWING FACTS:**

4. Solomon Colors operates a liquid pigments (also referred to as iron oxide pigment) manufacturing and distribution facility at 1251 W. Durst Drive in Rialto, California. Pigments are generally mixed inside its building and stored in 300 gallon plastic totes outside the building prior to distribution. The pigments are used for coloring concrete. This facility has been in operation since at least November 2003. This determination is based on a review of historical aerial photography of the site using Google Earth.
5. The State's General Permit for Storm Water Discharges Associated with Industrial Activity, Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (hereinafter 'NPDES') Permit No. CAS000001 (hereinafter 'General Permit') regulates storm water discharges from industrial facilities. The Standard Industrial Classification (SIC) code for the Solomon Colors manufacturing activity is 3295. Facilities with SIC code 3295 are required to get coverage under the General Permit. Solomon Colors' corporate headquarters is located in

Springfield, Illinois. Solomon Colors was aware of the requirement for NPDES permit coverage as they had obtained coverage for its operations in Springfield in July 1993. However, Solomon Colors operated its Rialto facility from November 2003 to July 14, 2009 without obtaining coverage under the General Permit. This is a violation of the General Permit and the CWC. On July 14, 2009, Solomon Colors obtained coverage under the General Permit.

6. A review of historical aerial photographs for the facility indicates evidence of spilled pigment within the facility's storage yard and tracking of this material onto the nearby streets (as evidenced by red coloration). The aerial photographs also indicate that the facility did not have adequate control measures to prevent the spill of this material to the ground or to prevent tracking onto the streets.
7. In April 2009, during the investigation of a spill cleanup incident at the nearby Toys R Us warehouse, Regional Board staff became aware of the Solomon Colors facility operating without coverage under the General Permit. On March 23, 2009, a City of Rialto inspector noted red stains on Durst Drive coming from Solomon Colors, and on April 3, 2009, the San Bernardino County Fire Department (hereinafter Haz-Mat) responded to this incident. Regional Board staff was notified of the incident on April 6, 2009 by Haz-Mat. Investigations by Regional Board staff confirmed that one of the 300 gallon totes containing the liquid pigment had leaked its contents to the paved storage yard due to a valve failure on or around March 15, 2009. Solomon Colors made no attempt to contain the discharge or to clean it up.
8. The records from the Rialto Channel precipitation station indicate that there was a 0.24 inches storm event on March 22, 2009. Storm water runoff, comingled with the spilled pigment, was carried from the Solomon Colors facility to Durst Drive and thence into the neighboring Toys R Us warehouse facility. The flow travelled approximately 0.25 miles through the Toys R Us property before discharging into a municipal storm drain that is tributary to Cactus Channel. Cactus Channel discharges into Rialto Channel, a tributary to Reach 4 of the Santa Ana River. Photographs taken after the storm event show red stains all along the flow path including the curbs and gutters on Durst Drive, Toys R Us property, the municipal storm drain and Cactus Channel. The designated beneficial uses of Reach 4 of the Santa Ana River include: groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat and wildlife habitat. According to a copy of an invoice obtained from Toys R Us, it spent \$6,202 to pressure wash and cleanup the stained portions of its facility.
9. Solomon Colors discharged liquid pigment into storm water conveyance systems and ultimately to waters of the United States on March 22, 2009 and on at least 62 prior storm events of the same or higher intensity. The facility operated without getting coverage under the General Permit from at least November 2003 to July 2009. Regional Board staff used historical rainfall data from the Rialto Channel precipitation station and aerial photographs from Google Earth to determine the number of days of discharge. These discharges constitute a discharge of pollutants to waters of the United States. Solomon Colors is alleged to have violated CWC §13376 by failing to file a report of discharge prior to the discharge of pollutants in accordance with CWC §13260.
10. Pursuant to CWC §13385(c), the Regional Board may impose civil liability administratively for violations of CWC §13376 on a daily basis at a maximum of ten thousand dollars (\$10,000) for each day in which the violation occurs in accordance with CWC §13385(c)(1); or where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to

exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharge but not cleaned up exceeds 1,000 gallons in accordance with CWC §13385(c)(2); or both. The Assistant Executive Officer proposes to impose civil liability in accordance with CWC §13385 (c)(1).

11. Based on the aerial photographic history of Solomon Colors' storage yard and parking lot, red stains and tracking from the facility were observed in aerial photographs since November 14, 2003. There were sixty three (63) storm events of 0.24-inches or greater that likely carried this material to waters of the United States. Regional Board staff investigated the one incident indicated above. The exact volume of the polluted discharge (liquid pigment comingled with storm water) could not be estimated for all the discharge events. Therefore, Regional Board staff is proposing only a per day penalty for this discharge. In accordance with CWC §13385(c)(1), the total maximum liability for sixty-three days of violation is \$630,000 (63 daysX\$10,000/day=\$630,000). If the penalty is assessed based on the total number of days the facility operated without getting coverage under the General Permit (from November 14, 2003 to July 14, 2009, a total of 2,066 days), the maximum penalty would be \$20.66 million.
12. CWC §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. Consideration of these factors is addressed in the following table.

Factor	Comment
<b>A. Nature, Circumstances, Extent and Gravity of Violation</b>	<p>The Solomon Colors facility in Rialto has been in operation since at least November 14, 2003. During this time, liquid pigment residue has been discharged in storm water runoff from its facility on several occasions. Solomon Colors' corporate office was aware of storm water permit requirements, including requirements for obtaining coverage under a NPDES permit. Solomon Colors failed to obtain permit coverage and failed to take measures to eliminate the discharge of pollutants from its Rialto facility.</p> <p>Based on records of historic rainfall events and the aerial photographs, it appears that Solomon Colors discharged polluted storm water on at least 63 occasions since November 2003.</p> <p>Regional Board staff is not aware of any impacts to receiving waters from the liquid pigment discharges. However, the potential existed for the pigment to have impacts considering the beneficial uses of Reach 4 of the Santa Ana River.</p>

<b>B. Culpability</b>	<p>Solomon Colors failed to take responsible actions to control the discharge of liquid pigment from its facility. It failed to enroll in the General Permit for approximately six years, thus delaying the implementation of appropriate control measures to control the discharge of pollutants in storm water runoff. The corporate owners of the facility were aware of the permit requirements and had obtained coverage for their facility in Springfield, Illinois.</p> <p>City of Rialto and Regional Board staff repeatedly advised Solomon Colors, beginning on April 2, 2009, to obtain General Permit coverage and to implement pollution control measures at the site. Solomon Colors delayed the development and implementation of a site-specific Storm Water Pollution Prevention Plan (SWPPP), during which time pollutants continued to be exposed to storm water. On May 19, 2009, Solomon Colors' consultant stated that a Notice of Intent for General Permit coverage was being prepared for submittal to the State Water Resources Control Board. Solomon Colors, however, did not obtain General Permit coverage until July 14, 2009, 104 days after the first request from the City of Rialto.</p> <p>After the discharge of liquid pigment on March 22<sup>nd</sup>, Solomon Colors made no attempt to clean the stained curb and gutter of Durst Drive or its neighbors' property. In fact, Toys R Us spent \$6,202 to clean the stained paved surfaces affected by the pigment discharge.</p>
<b>C. Economic Benefit or Savings</b>	<p>Solomon Colors saved at least \$43,053 by not obtaining General Permit coverage and by not developing and implementing a SWPPP and monitoring and reporting program as required by the General Permit and by not responding to spills and leaks. This amount includes \$6,202 that Toys R Us paid to a contractor to remediate the after effects of the March 2009 discharge, savings from not paying the annual permit fees for six years from 2003 to 2009, and expenses related to permit compliance such as for preparation and implementation of a SWPPP and developing and implementing a monitoring and reporting program.</p> <p>The Standard Industrial Classification (SIC) code for Solomon Colors' business activity is 3295. There are five other permitted businesses within the Regional Board's jurisdiction with this SIC code, and thirteen other permitted businesses statewide. By failing to obtain General Permit coverage and implement a site-specific SWPPP, Solomon Colors gained an unfair economic advantage over other facilities conducting similar business activity regulated under the General Permit.</p>

<b>D. Prior History of Violations</b>	The March 2009 incident was a documented discharge of pollutants reported to Regional Board staff by other regulatory agencies. However, between November 2003 and the present there have been 63 additional storm events where a similar or higher amount of precipitation occurred and likely caused discharges of the pigment. In addition to avoiding enrolling in the General Permit, Solomon Colors failed to apply for a City business license each year they were in operation until mid-2009.
<b>E. Staff Costs</b>	Regional Board staff spent approximately 100 hours investigating and responding to this incident. The total cost for staff time is \$15,000 (100 hrsX\$150/hr=\$15,000). Justice may require the consideration of the amount of staff costs incurred by the staff in investigating and enforcing against the alleged violations.
<b>F. Ability to pay</b>	Solomon Colors is currently operating as a business and should be able to pay the proposed civil liability based on the economic savings it enjoyed as a result of the violations alleged in this Complaint. Solomon Colors has not provided any information to indicate that it is unable to pay the proposed assessment.

13. After consideration of the above factors, the Assistant Executive Officer proposes civil liability be imposed on Solomon Colors in the amount of seventy-eight thousand dollars (\$78,000) for the violations cited above. This amount includes \$63,000 in per day assessments and \$15,000 in staff costs.
14. California Water Code §13327 also requires consideration for economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The proposed assessment is consistent with these provisions.

#### WAIVER OF HEARING

Solomon Colors may waive its right to a hearing. If Solomon Colors chooses to do so, please sign the attached waiver form and return it, together with a check for \$78,000 payable to the State Water Pollution Cleanup and Abatement Account, in the enclosed preprinted envelope. If you waive your right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992.

11/9/09  
Date

Kurt V. Berchtold  
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Assistant Executive Officer  
Regional Board Prosecution Team